IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2920 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMITBHAI D PARIKH

Versus

RAJPIPALA NAGAR PALIKA

Appearance:

1. Special Civil Application No. 2920 of 1991

MR AS SUPEHIA for

MR IS SUPEHIA for Petitioner

MR ADIL MEHTA for Respondent No. 1

NOTICE SERVED for Respondent No. 1

MR JAYESH A DAVE for Respondent No. 2

MR JF SHAH for Respondent No. 3-5

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 08/12/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the order dated 14th April, 1991 made by the President, Rajpipala Nagar Palika, respondent No.1 herein.

2. One Divyakanat Ratanlal Parikh, the father of the petitioner was engaged by the Rajpipla Municipality, respondent No.1 herein (hereinafter referred to as "the Municipality") as a daily wage employee. The said Shri Divyakant Parikh was discharged from service on 3rd January, 1981. Feeling aggrieved, the said Shri Divyakant Parikh raised an industrial dispute which was referred to the Labour Court, Vadodara and was registered as Reference (LCV) No.42 of 1982. Pending the said reference, the said Shri Divyakant Parikh passed away in the year 1985. His son, the present petitioner and others were impleaded in the said proceedings as the legal representatives of the said Shri Divyakant Parikh. In the said proceedings, on 19th July, 1989, the President of the Municipality and the said legal representatives entered into a settlement. By award dated 25th July, 1989, the reference was disposed off in terms of the said settlement. By the said settlement, the claimants agreed to forego their right to back wages in the pending proceedings. The President of the Municipality agreed to offer employment to the present petitioner.

3. It is the case of the petitioner that pursuant to the said settlement and award dated 25th July, 1989, by order dated 11th April, 1991 made by the President of the Municipality, the petitioner was appointed as Shop Inspector in the Municipality. The said order of appointment was cancelled by the impugned order dated 14th April, 1991. Feeling aggrieved, the petitioner has preferred the present petition.

4. Learned advocate Mr.Supehia has appeared for the petitioner. He has submitted that the Municipality had given an assurance to the petitioner for employment in the Municipality. Pursuant to the said assurance and the award made by the Labour Court, the petitioner was offered employment as Shop Inspector. The said order of appointment was made in compliance with the award of the Labour Court. The same could not have been cancelled. He has submitted that the order of appointment dated 11th April, 1991 and the impugned order dated 14th April, 1991 came up for approval before the general body of the Municipality in its meeting held on 14th April, 1991. The General Board of the Municipality did not approve the said order. In other words, the impugned order was not

approved by the General Board of the Municipality. The petitioner has, therefore, right to continue as Shop Inspector. He has also submitted that before cancellation of the appointment order, neither the procedure was followed, nor the petitioner was given an opportunity of being heard. The impugned order, therefore, being void ab-initio, requires to be quashed and set aside.

5. The petition is contested by the Municipality. It is denied that the petitioner was offered employment as Shop Inspector in compliance with the settlement and the aforesaid award of the Labour Court. It is stated that in compliance with the settlement and the award passed by the Labour Court, the petitioner was employed on 3rd October, 1989 as daily wage labourer. He continued to serve as such till 6th April, 1991. After 6th April, 1991, he did not report for duty of his own volition. The order dated 11th April, 1991 was made by the President of the Municipality without the authority of law and contrary to the sanction given by the Director of the Municipalities. It is stated that the post of Shop Inspector was sanctioned by the Director of Municipalities by order dated 14th March, 1985 on the terms and conditions mentioned therein. The said terms provided, inter-alia, that the reservation policy shall apply to the post of Shop Inspector. Pursuant to the said sanction and in view of the roster, it was decided that the said post be filled in by appointment of a candidate belonging to a Scheduled Tribe. Public advertisement inviting applications from eligible candidates belonging to a Scheduled Tribe, was issued on 15th July, 1988. However, for the administrative reasons, the said post could not be filled in and remained vacant. Nevertheless, the President of the Municipality had no authority to appoint the petitioner on the said post of Shop Inspector. In any view of the matter, the said appointment was subject to approval by the General Board of the Municipality. The General Board having considered the appointment of the petitioner, did not accord approval to the said appointment.

6. Learned advocate Mr.Shah has appeared for the respondent Labour Union. He has reiterated the facts stated by the Municipality. He has also submitted that the appointment of the petitioner as Shop Inspector was per se illegal and was rightly cancelled. He has submitted that the preamble to the said order, which suggested that the said order was made pursuant to the settlement and the award of the Labour Court, was false and misleading. He has submitted that pursuant to the

said settlement, the petitioner was engaged as daily wage labourer and thereafter he could not have any claim under the said settlement. The order of cancellation of appointment of the petitioner was, therefore, justified. He has further submitted that in view of the settlement arrived at by the union and the Municipality, all posts in the Municipality are required to be filled in by promotion from the immediate lower cadre, on the basis of seniority-cum-merits and no post can be filled in by direct selection. The order of appointment of the petitioner was, therefore, in contravention of the said settlement. He has also submitted that pending this petition, by interim arrangement, under order dated 4th December, 1991 passed by this Court (Coram : R.K. Abichandani, J.), the petitioner has been continued in service as a junior clerk. He has submitted that the petitioner had no right to be appointed as junior clerk also. He has further submitted that even for the post of clerk, a candidate is required to possess qualification of S.S.C. Examination and Diploma in Local Self Government (LSGD). As the petitioner had not acquired the qualification of LSGD, he was not eligible for appointment as junior clerk. Pending this petition also, he has not acquired the required qualification. He, therefore, cannot be continued in service as junior clerk.

7. I am of the view that the entire gamut of offering employment to the petitioner and his appointment as Shop Inspector, was ex-facie illegal and contrary to Articles 14 and 16 of the Constitution. Appointment to a public service is required to be made in consonance with the relevant rules. Such post is required to be offered to the public at large and eligible candidates are required to be given opportunity to compete for such appointment. Public service is not a thing which can be offered in largess to any person, even by the appointing authority.

8. In the present case, settlement was arrived at between the petitioner and the President of the Municipality on 19th July, 1989. The petitioner had agreed to forgo his right to receive back wages, if any, in the pending proceeding. In lieu thereof the President had agreed to offer employment to the petitioner, keeping in view his educational qualification. Pursuant to the said settlement and the award made on 25th July, 1989, the petitioner was appointed as daily wage labourer. The fact that the petitioner was appointed as daily wage labourer and he had served as such from 3rd October, 1989 to 6th April, 1991 is not controverted. Thus, in my

view, the said settlement and the award were complied with and nothing further was required to be done pursuant to the said settlement and the award. Nevertheless, the President of the Municipality, without the authority of law, by order dated 11th April, 1991 appointed the petitioner as Shop Inspector on condition that the said appointment was subject to the approval of the Municipality. In the said appointment order, a reference was made to the above referred Reference No.42 of 1982 and the award made on 25th July, 1989. Intimation was sent to the State Government in its Urban Development and Urban Housing Department and also to the Social Welfare Department, to the effect that the said appointment was made pursuant to the award of the Labour Court and that in view of the said award, the post could not be filled in by a candidate belonging to Schedule Tribe. It is evident that the President of the Municipality had misguided the concerned authorities by referring to the award, which had already been complied with and nothing further was required to be done in compliance thereof. Hence, I am of the opinion that the order of appointment made in favour of the petitioner was without the authority of law, illegal and void ab-initio. The petitioner cannot have a right to employment pursuant to the said order of appointment. Cancellation of the said order of appointment was in consonance with the terms of the order of appointment. The principle of natural justice was not called for. Consequently, the petitioner could not have legitimate grievance against the impugned order dated 14th April, 1991.

9. As recorded hereinabove, the petitioner has been continued in service as junior clerk pursuant to the interim arrangement made by order dated 4th December, 1991. It is not disputed that the petitioner is not qualified for appointment as Junior Clerk. Therefore, the petitioner's employment as junior clerk cannot be protected without violating the relevant rules/ settlement governing employment in the Municipality and Articles 14 and 16 of the Constitution of India. This Court, exercising extraordinary jurisdiction under Article 226 of the Constitution of India, cannot issue a direction to protect such employment, in contravention of the relevant rules and the Constitution of India.

For the reasons aforesaid, the petition is dismissed with costs. Rule is discharged. Interim relief stands vacated.

(Ms.R.M. DOSHIT, J.)
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